

Members:
Ed Donaldson, Chairman
Horace Humphrey, Vice-Chair
Joseph M. Dykes
Vickie Mullins
George Lott



Alternates:
Yvette Carson
Winton McHenry
Nathan Feinberg
Joseph Decosta
Alfonso Ferguson Sr

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
Fayetteville North Carolina 28301
(910) 678-7602

TENTATIVE AGENDA
FEBRUARY 20, 2014
7:00 PM

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, February 20, 2014, at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville, North Carolina. The agenda is as follows:

1. ROLL CALL
2. OATH OF OFFICE
3. SWEAR IN STAFF
4. ADJUSTMENTS TO THE AGENDA
5. APPROVAL OF THE DECEMBER 19, 2013 MINUTES
6. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES
7. APPROVAL OF CHANGES TO THE 2014 DEADLINE/MEETING SCHEDULE
8. PUBLIC HEARING DEFERRALS/WITHDRAWALS
9. POLICY STATEMENT REGARDING APPEAL PROCESS
10. PUBLIC HEARING(S):

A. CONSIDERATION OF MOTIONS TO STAY/DEFERRAL

P13-14-C: CONSIDERATION OF AN APPEAL SUBMITTED UNDER ARTICLE XVI SECTION 1604, ADMINISTRATIVE REVIEW WITH THE BASIS OF THE APPEAL CONCERNING ISSUANCE OF A ZONING PERMIT FOR AN OUTDOOR FIRING RANGE TO TIGERSWAN INC AT 2850 TIGERSWAN DRIVE, OWNED BY PRECYTHE PROPERTIES, LLC; SUBMITTED BY KEVIN WEST ON BEHALF OF OK FARMS OF CEDAR CREEK, LLC; SAMUEL D. & DORIS M. FORT; RAEFORD B. LOCKAMY II; JULIA K. FAIRCLOTH; ARNOLD DREW SMITH; AND ROBIN CURRIN, ATTORNEY.

- B. **P14-01-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BILLBOARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON 2.41+/- ACRES; LOCATED AT 3580 GILLESPIE STREET; SUBMITTED BY RALPH HOLLOWAN (OWNER) AND M. GREY VICK ON BEHALF OF WATERWAY OUTDOOR, LLC.

11. DISCUSSION
12. UPDATE(S)
13. ADJOURNMENT

Members:
Ed Donaldson, Chairman
Horace Humphrey, Vice-Chair
Joseph Dykes
Vickie Mullins
George Lott



Alternates:
Yvette Carson
Winton McHenry
Nathan Feinberg
Joseph Decosta
Alfonso Ferguson Sr

Cumberland County Board of Adjustment

130 Gillespie Street
Fayetteville, NC 28301
(910) 678-7603

MINUTES
DECEMBER 19, 2013
7:00 P.M.

Members Present

Ed Donaldson, Chairman
Horace Humphrey
Joseph Dykes
Vickie Mullins
George Lott

Absent Members

None

Staff/Others Present

Patti Speicher
Robert Haigh
Ken Sykes
Robert Hasty, Jr. (Assistant
County Attorney)

Chair Donaldson called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Historic Courthouse.

1. ROLL CALL

Mr. Haigh called the roll and stated a quorum was present.

2. SWEAR IN STAFF

Chair Donaldson swore in the staff.

3. ADJUSTMENTS TO THE AGENDA

Swear in new alternate Board member, Alfonso Ferguson, Sr.

4. OATH OF OFFICE – ALFONSO FERGUSON, SR.

Ms. Speicher administered the oath to Mr. Ferguson.

5. APPROVAL OF THE OCTOBER 17, 2013 MINUTES

Mr. Dykes made a motion to accept the minutes as submitted, seconded by Ms. Mullins. The motion passed unanimously.

| | IN FAVOR | OPPOSED |
|-----------|----------|---------|
| DONALDSON | YES | NONE |
| HUMPHREY | YES | |
| DYKES | YES | |
| MULLINS | YES | |

LOTT YES

6. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES

There were none.

7. PUBLIC HEARING WITHDRAWALS

A. **P13-13-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1102 YARD REGULATION, SUB-SECTION G. BUFFER REQUIREMENTS 1-E, WHICH REQUIRES A SOLID BUFFER WHEN ANY OUTSIDE STORAGE OF MATERIALS, EQUIPMENT OR PRODUCT IS VISIBLE AND/OR ABUTTING ANY RESIDENTIAL DISTRICT AND/OR PUBLIC STREET, FOR A MOTOR VEHICLE STORAGE YARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON 4.30 +/- ACRES, LOCATED AT 5523 US HWY 301 SOUTH (SR 2284); SUBMITTED BY ROBERT D. TAYLOR JR (OWNER) AND TOM HOLT. **(WITHDRAWN)**

B. **P12-08-C:** RECONSIDERATION OF THE BOARD DECISION FOR APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR TO ISSUE A ZONING PERMIT TO TIGERSWAN INC. TO OPERATE THE TIGERSWAN TRAINING COLLABORATION CENTER AS A USE CONSISTENT WITH OUTDOOR RECREATION/AMUSEMENT FOR PROFIT AND WITH MECHANIZED VEHICLES ON A PROJECT SITE CONSISTING OF 978.4 +/- ACRES LOCATED SOUTHWEST OF SR 2053 (DOE HILL ROAD) AT 2850 TIGERSWAN DRIVE SUBMITTED BY RAEFORD B. LOCKAMY, II; SAMUEL D. AND DORIS M. FORT; JULIA KATHERINE FAIRCLOTH; OK FARMS OF CEDAR CREEK, LLC; AND ARNOLD DREW SMITH **(DEFERRED UNTIL LEGAL ISSUES RESOLVED)**

Mr. Lott made a motion to defer case P12-08-C, seconded by Mr. Humphrey. The motion passed unanimously.

| | IN FAVOR | OPPOSED |
|-----------|----------|---------|
| DONALDSON | YES | NONE |
| HUMPHREY | YES | |
| DYKES | YES | |
| MULLINS | YES | |
| LOTT | YES | |

8. POLICY STATEMENTS REGARDING APPEAL PROCESS

Mr. Haigh read the Board’s policy regarding the appeal process to the audience.

9. PUBLIC HEARING(S)

A. **P13-11-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BILLBOARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON 3.68 +/- ACRES; LOCATED AT 2589 GILLESPIE STREET; SUBMITTED BY MICHAEL KEITH SUTTON (OWNER) AND M. GREY VICK ON BEHALF OF WATERWAY OUTDOOR, LLC.

Chair Donaldson asked all speakers to come forward.

Chair Donaldson read the case heading.

CHAIR DONALDSON: Is this the same company we dealt with in October? What is this about? Is this a separate sign that they want to put up on the same property?

MS. SPEICHER: No sir, it's a different property

CHAIR DONALDSON: Okay. I recognized the name and I was just wondering. Is this in the same area that is currently under consideration for a consolidated ordinance between the County and the City, to control the signage?

MS. SPEICHER: Yes chair.

CHAIR DONALDSON: That's what I thought, they took my recommendation, which was to do that and started working on it the next week.

MS. SPEICHER: Yes sir.

CHAIR DONALDSON: I'm going to make a motion to continue this case pending the outcome of the ordinance. Now I need a second.

MRS. MULLINS: second

The motion passes unanimously.

| | IN FAVOR | OPPOSED |
|-----------|----------|---------|
| DONALDSON | YES | NONE |
| HUMPHREY | YES | |
| DYKES | YES | |
| MULLINS | YES | |
| LOTT | YES | |

CHAIR DONALDSON: Mr. Talley we're going to continue this case, they're working on a new ordinance to unify the County and City. It is my understanding that it still has to be presented to the respective boards of the County and City. What is the status of the ordinance?

MR. TALLEY (ATTORNEY FOR APPLICANT): My client does not object to a deferral.

MS. SPEICHER: It is still in draft form, it's not set for public hearing at this time. We have met with the City staff, County Commissioners' Policy Committee, and the Crown Coliseum's commission.

CHAIR DONALDSON: My recommendation as Chairman is to continue this case for 90 days and if nothing is done by then we will hear this case. It's not fair to the homeowners and the owner of the property for this to go on indefinitely. Given what happened last time, I think the results will be the same if there is no ordinance in place.

MS. SPEICHER: So we will say the County Board of Adjustment March meeting?

CHAIR DONALDSON: We will hear this case on March 20th.

B. P13-12-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 195 FOOT TOWER IN AN A1 AGRICULTURAL DISTRICT ON 34.27+/- ACRES, LOCATED ON THE EAST OF HUCKLEBERRY ROAD (SR 1864) AND SOUTH OF SANDEROSA ROAD (SR 1833); SUBMITTED BY BROADWELL LAND COMPANY (OWNER) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

Chair Donaldson read the case heading.

CHAIR DONALDSON: Asked all speakers to come forward.

MR. HAIGH: Reviewed the land use.

CHAIR DONALDSON: Swore in all speakers and opened the public hearing.

TOM JOHNSON: This is a thickly wooded piece of property as you could see from the aerial. It's a 195 foot self-supporting tower; is it's a mono pole. It's a thickly wooded area and we're removing enough trees for the access road and the tower compound. We are here on behalf of AT&T, I represent American Tower; the use of wireless phones has increased and it's shifted to the point where a lot of folks are wireless only now. So the demand has gone up tremendously. The next slide shows what's happening with the folks who are dropping their landline phones both in the United States and in North Carolina. Basically, 33 percent of the residents of North Carolina are wireless only, another 13 percent are mostly wireless; they have their landline phone but don't use it. As a result about 75 percent of calls on average to 911 are placed with wireless devices. That's why we have to get out there and improve the signal. When folks call in an emergency they can use their phone to reach 911. In addition a lot of EMS services are using wireless to transmit data back and forth to the hospital. Many times when fire responds they get a floor plan of the house they're going to from tax records wirelessly and download it to a laptop. That happens a lot. Wireless is not the only big thing but also data. When the iPhone was released in 2007 the use of phones for data, access the internet, use applications; has skyrocketed. Data taxes the demand on towers. There is limited capacity on each cell tower. The younger people are using wireless more than the older generation because that's what they grew up with, and that will continue. The next slide shows how much data taxes the system versus just using it for voice. The smartphone uses 50 times the bandwidth of just regular old voice, a laptop uses 368 times the bandwidth than a voice phone uses. That's why data is such a significant factor. The next slide shows that more and more people are using smartphones; the chart shows how many people are using smartphones, the gray part shows how many people use laptops, the orange shows tablet usage. People are moving to wireless devices. The next slide shows the adjoining tower sites, the triangles are the adjoining tower sites. The slide shows the existing sites that AT&T has in the area. The next slide shows the propagation map, it basically shows the strength of signals from the existing towers and these are the existing towers. The red color is in building commercial use, the yellow color is in building residential use, we're trying to get the signals strong enough in buildings so that folks can use their wireless devices, the green is outside coverage, the green and blue is outside coverage when you're in a car or outside your home. The white areas show no coverage, its spotty coverage in this area. The next slide shows what it will be once the tower is in place. The next slide shows where the access road will come in at. There was also an impact study that was done which is a part of the record.

MS. SPEICHER: Asked if Mr. Johnson would state his address for the record.

MR. JOHNSON: Tom Johnson, 4141 Parklake Ave., Suite 200, Raleigh NC 27616. If the Board has any questions I am more than happy to answer, I reserve the right to respond to any questions that the public may have.

CHAIR DONALDSON: Does anyone have any objection to receiving the application and supporting documents? No one had any objections.

MRS. MULLINS: At our last meeting you have another tower that was placed on Wade Stedman Road, this one that you want to do now off of Baywood is not 5 to 10 miles from the other ones, what is the radius for it to pick up?

MR. JOHNSON: This is what it is, this shows (pointing to slide presentation) the propagation map and the coverage 5, 10 miles is a long way when you are trying to provide in building coverage for data service. The actual search room for this site is 6/10 of a mile in radius, so it's small. There is about a ½ mile radius, and we're trying to close this gap (pointed out on map).

MRS. MULLINS: You stated that you could have more servers like Verizon that would be tapped in with this.

MR. JOHNSON: Yes ma'am, in fact your ordinance requires that we have that in terms of additional space. Even though this is built to suit for AT& T now, it's available for space for anybody. Our experience has been given the way that the market is now as soon as we get this built for AT& T the others will come soon.

MR. JOHNSON: Those were all good questions, this is a very technical industry and it has changed over the course of time and it's because of the nature of the consumer and how they are using wireless now.

MRS. MULLINS: Our standpoint as consumers you've got Verizon who might say our phones are better than yours, AT&T will say theirs is better...

MR. JOHNSON: There is competition and that's where the Federal Government comes into it because the Federal Government sold a limited number of licenses to carriers in this area, but it's a free market amongst the carriers.

CHAIR DONALDSON: Are there any more questions?

MR. LOTT: I have no questions.

MR. DYKES: Are you adding to something that is already there?

MR. JOHNSON: This is a new tower in a different location.

MR. DYKES: Is any of this controlled or mandated by the FCC?

MR. JOHNSON: The way the federal law is written, it's written that this Board reviews location, aesthetics and those kinds of things. But as far as where a particular tower is located in the business needs of the carrier that is restricted. That is not really a matter this Board gets into, except to show you why the need is there. But the state law and local law say that local boards only review setbacks, landscaping, aesthetics, and those kinds of things. But the design of the system is up to them.

MR. MARVIN HAMMOND: Mr. Hammond indicated where his property was located on the map (adjacent to west side of subject property). One of my concerns was the rezoning, than I found out that you don't need rezoning, another concern is are there any hazards that I should be aware of for me and my family.

MR. JOHNSON: There are no hazards, the FCC licenses this tower and we had to turn in a certification that it will operate at less than a fraction of 1 percent of the maximum amount of radio frequency that this tower could operate. Also, by law because we are governed by federal law, this board doesn't consider health effects or health impacts of towers but the federal government takes that into consideration. And it is safe.

CHAIR DONALDSON: Ms. Carter do you want to be heard?

MS. CARTER: I stay on Hummingbird

MR. BLAKE ROGERS: I own property at 4389 Huckleberry Road and wanted to know if I could get a copy of the impact statement (Ms. Speicher gave Mr. Rogers a copy of the impact statement).

Public Hearing Closed

MR. LOTT: I offer the motion that we accept this with the same conditions as set out by the Planning & Land Use Committee.

CHAIR DONALDSON: I second the motion. Is there any objection or any discussion? All those in favor say aye.

The motion passed unanimously.

| | IN FAVOR | OPPOSED |
|-----------|----------|---------|
| DONALDSON | YES | NONE |
| HUMPHREY | YES | |
| DYKES | YES | |
| MULLINS | YES | |
| LOTT | YES | |

C. P98-32-C: REVOCATION OF A SPECIAL USE PERMIT (NEE SPECIFIED CONDITIONAL USE PERMIT) OF AN AUTOMOBILE WRECKING YARD/JUNKYARD, IN A M(P) PLANNED INDUSTRIAL DISTRICT FOR AN AREA LOCATED AT 1079 S EASTERN BLVD. PROMISED LAND PARTNERS (OWNER)

CHAIR DONALDSON: Is there anybody here to be heard on this matter other than the petitioner? We need a motion.

MS. SPEICHER: For the record Robert did contact the property owner, and they are aware and understand why we are doing this.

MR. HAIGH: Yes it was an auto repair and junk yard and it's no longer being used for its permitted uses.

Public Hearing Open

Public Hearing Closed

MR. LOTT: I offer the motion that we revoke the permit.

MR. HUMPHREY: I second the motion.

CHAIR DONALDSON: Is there any discussion or are there any questions? All those in favor say aye.

| | IN FAVOR | OPPOSED |
|-----------|----------|---------|
| DONALDSON | YES | NONE |
| HUMPHREY | YES | |
| DYKES | YES | |
| MULLINS | YES | |
| LOTT | YES | |

10. DISCUSSION

There was none.

11. UPDATE(S)

There was none.

12. ADJOURNMENT

There being no further business at 8:15 pm, Mr. Dykes made a motion to adjourn, seconded by Mrs. Mullins.

Members:
Ed Donaldson, Chairman
Horace Humphrey, Vice-Chair
Joseph M. Dykes
Vickie Mullins
George Lott



Alternates:
Yvette Carson
Winton McHenry
Nathan Feinberg
Joseph Decosta
Alfonso Ferguson Sr

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
Fayetteville North Carolina 28301
(910) 678-7602

REVISED

2014

COUNTY BOARD OF ADJUSTMENT **DEADLINE/MEETING SCHEDULE**

Application Deadline

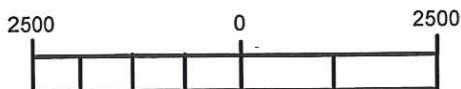
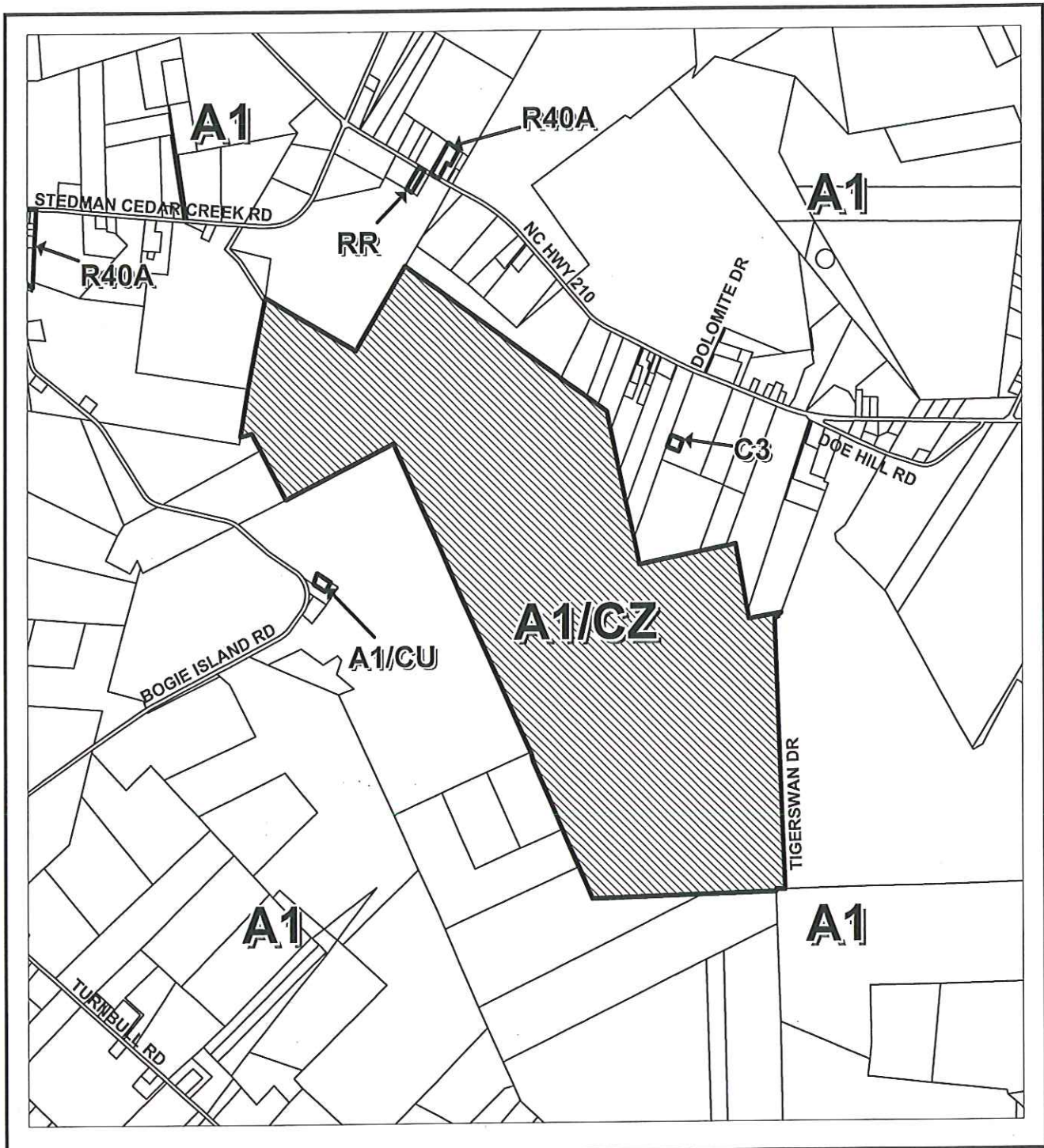
Monday, December 9, 2013
Thursday, January 16, 2014
Friday, February 14, 2014
Wednesday, March 12, 2014
Thursday, April 10, 2014
Tuesday, May 13, 2014
Tuesday, June 10, 2014
Wednesday, July 16, 2014
Tuesday, August 12, 2014
Friday, September 12, 2014
Tuesday, October 14, 2014
Friday, November 7, 2014
Tuesday, December 9, 2014

Meeting Date

Thursday, January 16, 2014
Thursday, February 20, 2014
Thursday, March 20, 2014
Thursday, April 17, 2014
Thursday, May 15, 2014
Thursday, June 19, 2014
Thursday, July 17, 2014
Thursday, August 21, 2014
Thursday, September 18, 2014
Thursday, October 16, 2014
Thursday, November 20, 2014
Thursday, December 18, 2014
Thursday, January 15, 2015

NOTE: Generally, deadlines are set 24 working days prior to the Board meeting date.

Revised JAN 2014



SCALE IN FEET

BOARD OF ADJUSTMENT ADMINISTRATIVE APPEAL

| | | | |
|-------------------------------|--------------|-----------------------------|--|
| ACREAGE: 978.40 AC.+/- | | HEARING NO: P13-14-C | |
| ORDINANCE: COUNTY | HEARING DATE | ACTION | |
| GOVERNING BOARD | | | |

NORTH CAROLINA
CUMBERLAND COUNTY

BEFORE THE CUMBERLAND COUNTY
PLANNING & INSPECTIONS DEPARTMENT
P-13-14-C

IN RE: CONSIDERATION OF AN)
APPEAL SUBMITTED UNDER)
ARTICLE XVI SECTION 1604,)
ADMINISTRATIVE REVIEW WITH)
THE BASIS OF THE APPEAL)
CONCERNING ISSUANCE OF A)
ZONING PERMIT FOR AN)
OUTDOOR FIRING RANGE TO)
TIGERSWAN, INC.,)
_____)

**CUMBERLAND COUNTY'S
MOTION TO STAY**

Now Comes Cumberland County, and moves for a stay of the proceedings in this appeal to the Board of Adjustment pending a final decision on the validity of the prior permit issued to TigerSwan, and in support of this motion shows the Board as follows:

On April 9, 2012, TigerSwan received approval for its site plan for a firing range, and this site plan was unanimously upheld by this Board on July 10, 2012 after a lengthy hearing.

Superior Court Judge C. Winston Gilchrist ordered the site plan approval set aside, and Cumberland County and TigerSwan have appealed his Order to the North Carolina Court of Appeals. Judge Gilchrist has granted a stay of his Order pending the appeal. The parties are currently preparing briefs to submit to the Court of Appeals.

Depending on the outcome of the appeal of the previously approved site plan currently before the Court of Appeals, the present matter may not need to be heard by this Board as the matter could in effect be resolved should the Superior Court be reversed, and a stay of this matter will avoid the possibility of an unnecessary hearing which could save all parties and the Board time and expense.

WHEREFORE, Cumberland County respectfully requests the Board of Adjustment

issue a Stay of further proceedings in this matter pending a final appellate decision on the previously approved site plan.

This the 11th day of February, 2014

CUMBERLAND COUNTY

By: Robert A. Hasty, Jr.

Robert A. Hasty, Jr.
Assistant County Attorney
State Bar No. 25551
Cumberland County Attorney's Office
P.O. Box 1829
Fayetteville, NC 28302-1829
(910) 678-7762

CERTIFICATE OF SERVICE

This is to certify that the foregoing "Cumberland County's Motion to Stay" has been
duly served by depositing a copy of same in the U.S. Mail to:

Robin T. Currin
robincurrin@aol.com
Attorney for Petitioners
P.O. Box 86
Raleigh, NC 27602

Charles Meeker
charlesmeeker@parkerpoe.com
Attorney for TigerSwan, Inc.
P.O. Box 389
Raleigh, NC 27602

This the 11th day of February, 2014

By: 
Robert A. Hasty, Jr.
Assistant County Attorney
Cumberland County Attorney's Office
P.O. Box 1829
Fayetteville, NC 28302-1829
Phone: (910) 678-7502

NORTH CAROLINA
CUMBERLAND COUNTY

BEFORE THE CUMBERLAND COUNTY
PLANNING & INSPECTIONS DEPARTMENT
P-13-14-C

IN RE: CONSIDERATION OF AN)
APPEAL SUBMITTED UNDER)
ARTICLE XVI SECTION 1604,)
ADMINISTRATIVE REVIEW WITH)
THE BASIS OF THE APPEAL)
CONCERNING ISSUANCE OF A)
ZONING PERMIT FOR AN)
OUTDOOR FIRING RANGE TO)
TIGERSWAN INC.)

**TIGERSWAN INC.'S
MOTION TO STAY**

TigerSwan, Inc. ("TigerSwan"), by counsel, hereby moves to stay the proceedings in this Board of Adjustment appeal, including the hearing scheduled for February 20, 2014, pending a final appellate decision on the validity of the prior permit issued to TigerSwan, and respectfully shows the Board of Adjustment that:

1. TigerSwan received approval for its site plan for a firing range in rural Cumberland County on April 9, 2012. This site plan approval was unanimously upheld by this Board on July 10, 2012, after a hearing that lasted approximately five hours.

2. The Superior Court has set aside the approval of TigerSwan's site plan, and TigerSwan and Cumberland County have appealed such decision to the North Carolina Court of Appeals.

3. This appeal is currently being briefed before the North Carolina Court of Appeals, with TigerSwan's and Cumberland County's briefs due before the end of this month.

4. Depending on the outcome of this appeal, the Board of Adjustment may not need to hear Petitioners' further challenge to the recent additional site plan approval granted

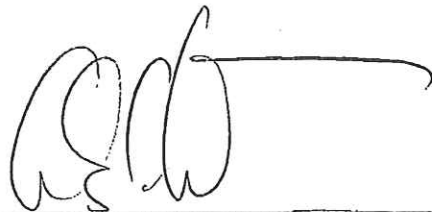
to TigerSwan after the property on which its firing range is located was conditionally rezoned. That is, if the Court of Appeals reverses the Superior Court and upholds the prior decision of this Board, and there is no further review by the Supreme Court of North Carolina, then the previously approved site plan would be valid, and no further proceedings would be needed. Thus, in order to avoid the possibility of an unnecessary hearing and the administrative burden and costs associated therewith, TigerSwan moves to stay the current proceedings before the Board in this appeal pending a final appellate decision on the previously approved site plan.

5. TigerSwan's counsel has asked both counsel for Cumberland County and the Petitioners whether they will consent to such a stay. Cumberland County has indicated that it does consent to a stay, while counsel for the Petitioners has indicated that Petitioners do not consent to the requested stay.

WHEREFORE, TigerSwan moves that the proceedings on this appeal be stayed pending a final appellate decision on the previously approved site plan for TigerSwan's firing range.

This the 10th day of February, 2014.

By:



Charles C. Meeker
N.C. State Bar No. 6757
PARKER POE ADAMS & BERNSTEIN LLP
150 Fayetteville Street, Suite 1400
Post Office Box 389
Raleigh, North Carolina 27602
Phone: (919) 828-0564
Fax: (919) 834-4564
Email: charlesmeeker@parkerpoe.com

CERTIFICATE OF SERVICE

This is to certify that on this date I served a copy of the foregoing **TIGERSWAN, INC.'S MOTION TO STAY** by electronic mail and by depositing a copy thereof in the United States mail, first class, postage prepaid, and addressed as follows:

Robin T. Currin, Esq.
Currin & Currin
Post Office Box 86
Raleigh, North Carolina 27602

Robert A. Hasty, Esq.
Cumberland County Attorney's Office
Post Office Box 1829
Fayetteville, North Carolina 28302

This 12th day of February, 2014.



Charles C. Meeker
PARKER POE ADAMS & BERNSTEIN LLP
150 Fayetteville Street, Suite 1400
Post Office Box 389
Raleigh, North Carolina 27602
Email: charlesmeeker@parkerpoe.com

P14-01-C
SITE PROFILE

P14-01-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BILLBOARD IN A C(P) PLANNED COMMERCIAL DISTRICT ON 2.10+/- ACRES; LOCATED AT 3580 GILLESPIE STREET; SUBMITTED BY RALPH HOLLOMAN (OWNER) AND M. GREY VICK ON BEHALF OF WATERWAY OUTDOOR, LLC.

Site Information:

Frontage & Location: 425'+/- on Gillespie St;

Depth: 303'+/-

Jurisdiction: Cumberland County

Adjacent Property: Yes, Northeast of subject property

Current Use: Retail sales of storage buildings and carports

Initial Zoning: C(P) – November 17, 1975 (Area 4)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: C(P),O&I(P) R6A & R10; West: C(P), R10 & R6A; East: C(P), M(P), R6A, RR; South: C(P), R10 & R6A

Surrounding Land Use: 4-retailing or servicing, residential (including manufactured dwellings), cemetery, 3-motor vehicle repair, motor vehicle sales, nursery operations, convenience retail w/ gasoline sales, vacant commercial, food production/wholesale sales

School Enrolled/Capacity: Baldwin Elementary: 745/790; South View Middle: 783/900; South View High: 1784/1800

2030 Growth Strategy Plan: Urban Area

Southwest Cumberland Land Use Plan: Heavy Commercial

Special Flood Hazard Area (SFHA): None

Water/Sewer Availability: PWC/PWC

Subdivision/Site Plan: See attached "Ordinance Related Conditions"

Soil Limitations: None

Average Daily Traffic Count (2010): 23,000 on I-95 Bus N

Municipal Influence Area: Town of Hope Mills

Highway Plan: US 301/Bus 95 (Gillespie Street) is identified in the Highway Plan as a major thoroughfare. The plan calls for widening to a multi-lane facility (6 Ln-div). The current ROW (260') is adequate

Cumberland County Zoning Ordinance Reference: Section 1307 Billboards (off-premises signs)

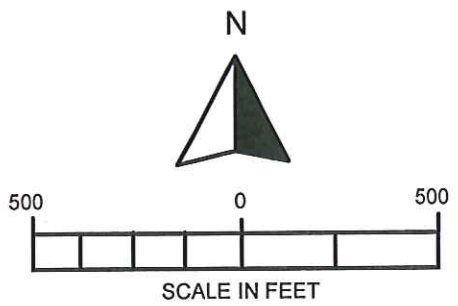
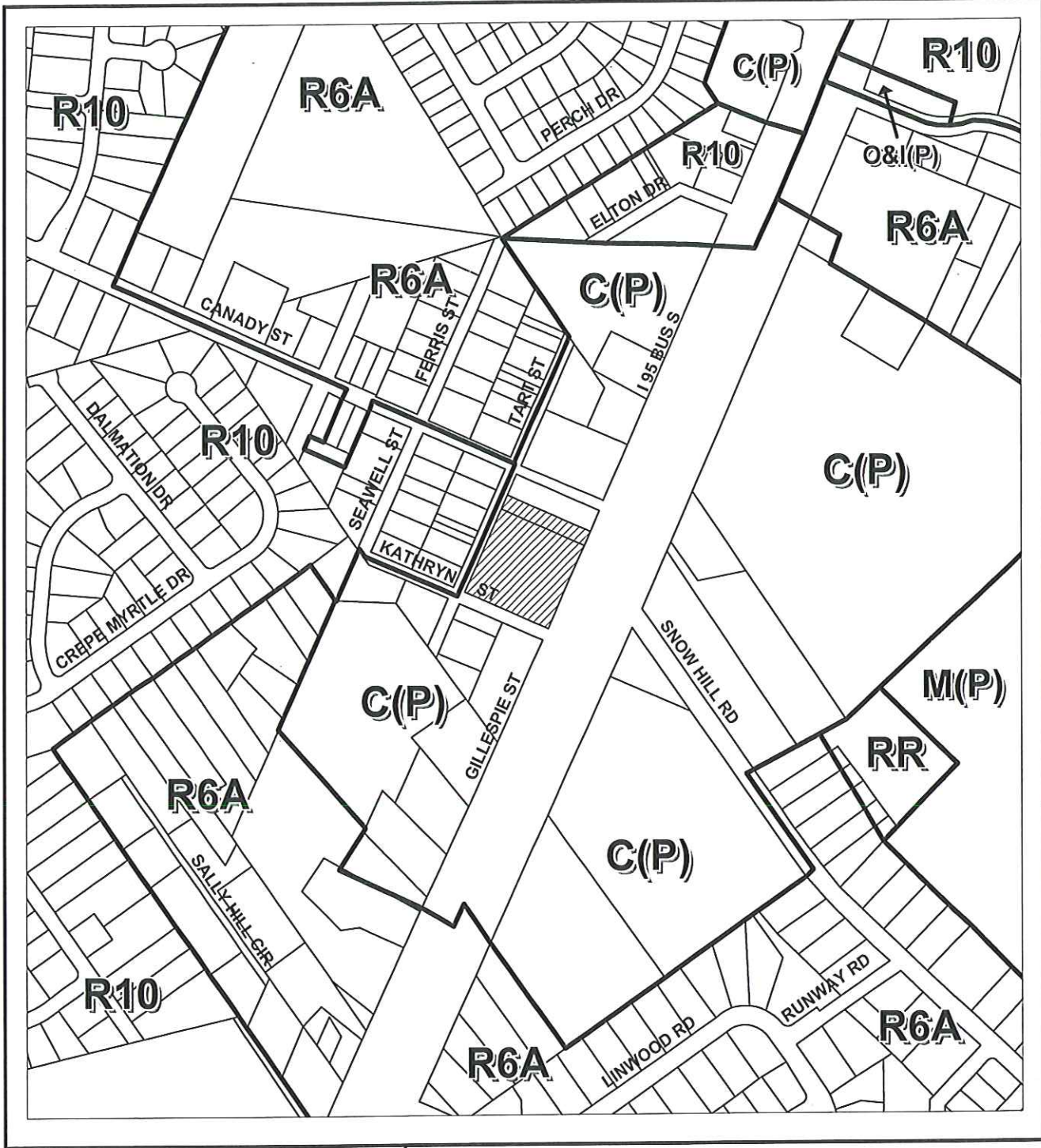
Notes:

1. Contents of Application:
 - a. Proposed billboard I-beam posts, maximum height 35 feet
 - b. Billboard will be illuminated
 - c. Billboard sign area: 480 square feet on each side
 - d. Billboard design: Static face

First Class and Record Owners' Mailed Notice Certification

A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith.

NOTE: LOCATED IN AOD



BOARD OF ADJUSTMENT SPECIAL USE PERMIT

| | | | |
|-----------------------------|--|-----------------------------|--------|
| ACREAGE: 2.41 AC.+/- | | HEARING NO: P14-01-C | |
| ORDINANCE: COUNTY | | HEARING DATE | ACTION |
| GOVERNING BOARD | | | |

PIN: 0424-78-6591
PIN: 0424-78-6325

AM

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 3580 Gillespie St Fayetteville, NC 28306

OWNER: Ralph Holloman

ADDRESS: 3580 Gillespie St Fayetteville ZIP CODE: 28306

TELEPHONE: HOME 624-8650 ^{NC 28306} WORK 865-4500

AGENT: M. Grey Vick

ADDRESS: Po Box 494 Wightsville Beach NC 28480

TELEPHONE: HOME 910-620-3567 WORK n/a

E-MAIL: waterwayoutdoor@gmail.com

APPLICATION FOR A SPECIAL USE PERMIT

As required by the Zoning Ordinance

0424-78-0591

A. Parcel Identification Number (PIN #) of subject property: 0424-78-6325
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 2.41 Frontage: 400.60 FT Depth: 300 FT

C. Water Provider: PWC

D. Septage Provider: PWC

E. Deed Book 3095, Page(s) 452, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: Ralph's ~~Storage Buildings~~ Used Auto Parts, Inc.
commercial business

G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.) erect 20x24 FT billboard
w/I-Beam Posts 35 FT OAH (overall height)
480 sq ft billboard - ^{per side} Double sided

STATEMENT OF ACKNOWLEDGMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the board is not required, it is strongly encouraged;
- The board will hear any and all argument for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the board has the authority to approve, deny, or defer the request for additional information to be provided;
- If the petitioner or their representative for this application does not appear personally before the board, whether there is opposition or not, the board has full authority to consider the case.
- If the board's decision is to deny the matter before them, the aggrieved party shall file a "Notice to Intent to Appeal" with the Planning & Inspections Staff on the next business day following the meeting in which the board's decision was made final, or the next business day following receipt of the written copy thereof.
- Any petition for review by Superior Court shall be file with the Clerk of Superior Court within 30 days after the decision of the board is made final.

Signed acknowledgment that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) Ralph Holloman

PRINTED NAME OF OWNER(S) Ralph Holloman

DATE 11-25-2013

Special Use Permit – Board of Adjustment
DRAFT
Ordinance Related Conditions
[Billboard (SUP) w/ Group Development for Retail (Storage Buildings)]

Pre- Plat/Permit Related:

1. The structure labeled on the site plan as “Concrete Block Building” and located along the southern property line of the subject property (Kathryn Street) must be either repaired so that it is in the proper state of maintenance and proper permits obtained if used as a storage building or demolished and properly disposed of – the requirement for demolition may control if the structure is damaged more than 50%. Note: Because this structure has not been used as a “2 Room Motel” for a significant period of time, the motel use is no longer approved for this location.
2. Five copies of a revised site plan depicting the required landscaping for the retail use of the subject property must be submitted to Land Use Codes for staff review and approval. Landscaping must be provided in accordance with Section 1102 N, Landscaping, County Zoning Ordinance. The following are the minimum standards for the required landscaping of this site:
 - Six large shade trees or 12 small ornamental trees within the front yard setback area along US HWY 301/I95 BUS (Gillespie Street).

In addition:

- a. Required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs; and
- b. All yard and planting areas shall be maintained in a neat, orderly, and presentable manner and kept free of weeds and debris.

NOTE: The approval has been conditioned upon the street tree requirement because of the use of the majority of the front yard area as display for the retail sales.

Pre- Permit Related:

3. A recombination plat (also known as a “No Approval Required” or “NAR”) must be submitted to Land Use Codes for review and approval for recording with the County Register of Deeds, and the plat must be recorded prior to any permit application for any structure and/or prior to the sale of any lot or unit within this development.

Permit-Related:

4. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.

Note: Condition No. 3 applies to the use of the subject property as retail sales of storage buildings as well as the billboard because conditional approval for the retail sales could not be documented. If the owner/developer is in possession of documentation approving the use of this site for retail, a copy must be provided to Code Enforcement at the time of application for permits.

5. The property owner/developer is the responsible party for ensuring proper permits required by the NC Building Code are obtained for the use of existing structure in conjunction with the retail sales. Contact a Building Inspector for more information regarding this condition.

6. At the time of zoning/building permit application, the developer must provide documentation from the NC Department of Transportation (NCDOT) to the Code Enforcement office that indicates the billboard and its proposed location is permitted by the NCDOT.
 7. For any new utilities, connection to public water and sewer is required, the Public Works Commission (PWC) must approve water and sewer plans prior to application for any permits. A copy of the PWC approval must be provided to Code Enforcement at the time of application for building/zoning permits. (Section 2306 A.1, Public Water and Sewer Systems, County Subdivision and Development Ordinance)
- Note: Due to an existing agreement between the PWC and the Town of Hope Mills, an annexation petition most likely will be required prior to the PWC's review of any utility plans.
8. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
 9. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.
 10. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
 11. The building and billboard final inspections cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.
 12. Because the subject property is located within the Airport Overlay District and in the event any structure is proposed to be greater than 200 feet in height, the developer will be required to provide a FCC Form 7460-1 to Code Enforcement at the time of permit application. This form must be acknowledged by the FCC that the structure is not a hazard or obstruction to air traffic.

Site-Related:

13. All uses, dimensions, setbacks and other related provisions of the County Subdivision & Development and the Zoning ordinance for the C(P) zoning and Airport Overlay districts must be complied with, as applicable.

Note: Upon agreement to the conditions and receiving conditional approval by the Board of Adjustment, the property owner forfeits all claim to previous approvals granted on this site for the use of the subject property as a motel and motor vehicle junkyard/wrecking yard. In addition, the property owner acknowledges that the staff will expeditiously process a revocation of the motor vehicle junkyard/wrecking yard conditional approval granted by the Board of Adjustment on January 31, 1985 (Case No. P85-3-C).

Note: The property owner acknowledges that this current Board of Adjustment application is for conditional approval of a billboard to be located on this site. The retail sale of storage buildings is a permitted use in the C(P) district requiring staff site plan approval. Any change in use or the addition of a different use to occur on the subject property, planning staff must first receive review and approval prior to commencement of the change or addition. – to include any modification of the proposed billboard and/or billboard location.

14. Any future freestanding signs, buildings, or other structures located on the subject property (to include any proposed divisions of the subject property) must be located in accordance with Section 1307, County Zoning Ordinance in relation to the billboard.
15. The proposed billboard must be located at least 50 feet from any other freestanding sign, building, or structure on the same lot. This includes the land area where the storage buildings and carports are on display.
16. Storage of junked vehicles on this site is not permitted.

17. All corner lots and lots fronting more than one street must provide front yard setbacks from each street.
18. This conditional approval is not approval of any freestanding signs other than the billboard. If a freestanding sign is desired, re-submittal of the site plan for staff review and approval is required prior to application for any freestanding sign permits. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
19. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision and Development Ordinance)
20. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision and Development Ordinance)
21. In the event a stormwater utility structure is required by the NC Department of Environment and Natural Resources (NCDENR), the owner/developer must secure the structure with a four foot high fence with a lockable gate, and is required to maintain the detention/retention basin, keeping it clear of debris and taking measures for the prevention of insect and rodent infestation.
22. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
23. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
24. A solid buffer must be provided and maintained to screen from view from the public streets all storage areas in accordance with the provisions of Section 1102 G, Buffer Requirements, County Zoning Ordinance. (Note: Chain link fencing **cannot** be used to satisfy the buffer requirement.)
25. All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
26. All required off-street parking spaces shall be a minimum of 9' x 20'; a minimum of one off-street parking space for each employee and one space for each 3,000 square feet of display area is required for this development.
27. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained, so that the site remains in a constant state of being aesthetically and environmentally pleasing.

Plat-Related:

28. The recombination must be drawn so the property lines are solid lines with the bearings and distances, acreage and lot identifier is reflected on the plat.
29. "I95 BUS – Gillespie St" must be labeled as "US HWY 301/I95 BUS (Gillespie Street)" on the recombination plat.
30. Any/All easements must be reflected on the recombination plat and labeled as to type of easement, reference number for document creating the easement, and the name of the agency, individual, etc. who holds the easement.
31. A 25' right-of-way radius is required at all intersections and must be reflected on the recombination plat. (Section 2304.10.c, Street Design, County Subdivision and Development Ordinance)
32. The NC Department of Transportation (NCDOT) stamp must be affixed to the recombination plat prior to submission for approval for recordation by Land Use Codes.
33. The notarized signature(s) of all current tax record owner(s) and notary certifications appear on the recombination plat when submitted for approval for recording. (Section 2503 D, Certificate of Ownership and Dedication, County Subdivision and Development Ordinance)

34. The recombination plat must be submitted to Land Use Codes for review and approval for recording with the County Register of Deeds, and the plat must be recorded prior to any permit application for any structure and/or prior to the sale of any lot or unit within this development.

Plat-Required Statements:

35. Since this development is located within the *Airport Overlay District* as shown on the official zoning map, the following disclosure statement is required to be provided on the recombination plat (Section 8.101.E, Notice and Disclosure of Noise Impact Disclosure, County Zoning Ordinance):

“Property shown on this plan/plat is within the Cumberland County Airport Overlay District and all or a portion of the property described hereon is within an area that is subject to an average noise level near to or exceeding 65 dbl.”

36. All structures shall be shown on the recombination plat or the final plat shall reflect the following statement (Section 2504 D, County Subdivision and Development Ordinance):

“Nonconforming structures have not been created by this recombination plat.”

Other Relevant Conditions:

37. The applicant is advised to consult an expert on wetlands before proceeding with any development.
38. The subject property is located within the Town of Hope Mills Municipal Influence Area (MIA) and the town has tree preservation standards in their ordinances. The developer is encouraged to retain as many of the existing trees as possibly on this site.
39. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.
40. This conditional approval is not to be construed as all encompassing of the applicable rules, regulations, etc. which must be complied with for any development. Other regulations, such as building, environmental, health and so forth, may govern the specific development. The developer is the responsible party to ensure full compliance with all applicable Federal, State, and local regulations.
41. Because the subject property is located within the Airport Overlay District, the developer is strongly encouraged to discuss their development plans with Land Use Codes Section and/or the Fayetteville Regional Airport Director early in the planning stage to ensure that the proposed height of any proposed structure can be found to be no obstruction or hazard to air navigation.
42. The subject property is located within the Town of Hope Mills' *Municipal Influence Area* (MIA). Typically, a concrete sidewalk is required to be constructed; however, this conditional approval – not requiring a concrete sidewalk – is consistent with the Joint Planning Board's policy of not requiring sidewalks when there is no new development occurring on the site. For any future new construction or additional development on this tract, sidewalk construction along US HWY/I95 BUS (Gillespie Street) will be required.

Thank you for choosing Cumberland County and the Hope Mills area for your business location!

If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605 with the Land Use Codes Section; otherwise, contact the appropriate agency at the contact numbers below.

Contact Information (Area Code is 910 unless otherwise stated):

| | | |
|-----------------------------------|---------------|----------|
| Subdivision/Site Plan/Plat | Ed Byrne | 678-7609 |
| Code Enforcement (Permits): | Ken Sykes | 321-6654 |
| County Building Inspections: | Gary Faulkner | 321-6648 |
| Fire Marshal – Emergency Services | Rodney Ward | 321-6625 |
| PWC: | Heidi Maly | 223-4737 |

| | | |
|---------------------------------|---------------------|-------------------------|
| Town of Hope Mills: | | 424-4555* |
| Town Clerk: | Melissa P. Adams | |
| Chief Building Inspector: | Mike Bailey | |
| County Public Utilities: | Amy Hall | 678-7637 |
| Corp of Engineers (wetlands): | Crystal C. Amschler | (910) 251-4170 |
| NCDENR (E&S): | Sally Castle | 433-3300 |
| Location Services: | | |
| Site-Specific Address: | Ron Gonzales | 678-7616 |
| Tax Parcel Numbers: | | 678-7549 |
| NCDOT (driveways/curb-cuts): | Gary Burton | 486-1496 |
| N.C. Division of Water Quality: | Mike Randall | (919) 733-5083 ext. 545 |

*This is the main telephone number for the Town of Hope Mills; once connected, the caller will be directed to the various departments.